The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Technical Support Document

For Proposed Amendments To

**301 CMR 40.00
Toxic Use Fee**

**Regulatory Authority:
M.G.L. Chapter 21I, §§ 4 and 19**

September 2014

As set forth in the Background Document for the Proposed Amendments to the Toxics Use Reduction Fee, the Toxics Use Reduction Administrative Council has voted to change the fees according to a schedule referred to as "Option B". The Council has agreed, however, that it will seek public comment on two alternative methods of setting the fees and whether they should be phased in over two years. These methods are referred to as "Option A" and "Option C".

All options use a 50% increase in the chemical fee. Option B, which is described in detail in the main Background Document, employs a 50% increase in the base fee for companies with 100 or more employees, an approximate 50% increase in the maximum fee for companies with fewer than 100 employees, and an approximate 22% increase in the maximum fee for businesses with 100-499 employees.

The program closely examined more than a dozen alternative scenarios for raising the fees while mitigating the impact for companies using fewer chemicals and/or for companies with fewer employees. Option B was selected because it had the best success at achieving these goals while also using a straightforward rationale for effecting the increase.

Options A and C are described below.

Option A is an across-the board increase of 50% for all categories.

Option A						
Number of employees	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥ 10 to < 50	$1,850	$2,775	$1,100	$1,650	$5,550	$8,325
≥ 50 to < 100	$2,775	$4,162	$1,100	$1,650	$7,400	$11,100
≥ 100 to < 500	$4,625	$6,938	$1,100	$1,650	$14,800	$22,200
≥ 500	$9,250	$13,875	$1,100	$1,650	$31,450	$47,175

Option A was not recommended by the program because it does not contain mitigations for small businesses. In addition, the highest fee maximum with an across-the-board increase comes to $47,175. Although this fee only applies to companies with 500 or more employees, it was felt that this increase would be excessive.

Option C is a modification of Option B that was developed in response to suggestions that the program try to shift more of the burden of a fee increase to companies using more chemicals.

Option C						
Number of employees	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥ 10 to < 50	$1,850	$1,850	$1,100	$1,650	$5,550	$8,325

≥ 50 to < 100	$2,775	$3,252	$1,100	$1,650	$7,400	$12,506
≥ 100 to < 500	$4,625	$6,221	$1,100	$1,650	$14,800	$22,200
≥ 500	$9,250	$13,875	$1,100	$1,650	$31,450	$31,450

This approach is informed by an analysis of when a company "maxes out"; that is, reaches the maximum fee. For example, if companies max out at four chemicals, then companies using five or more chemicals pay the same as companies using four chemicals. Option C was an attempt to move the point at which companies max out to higher numbers of chemicals.

Option C also responds to comments that the smallest businesses, with 10-49 FTEs, should be the priority for mitigating impacts, and that a graduated increase should be applied to the companies with 50-99 employees, as they have a greater ability to pay.

The program did not recommend Option C because every attempt to "move the max" created imbalances in which either very small companies paid much larger amounts, or there was an excessively uneven distribution of fee burden among categories.

Option C employs a 17.2% increase in the base fee for businesses with 50-99 employees, a 34.5% increase for businesses with 100-499 employees, and a 50% increase for businesses with 500 or more employees. Option C keeps the 50% increase in the maximum fee for the smallest companies, employs a 69% increase for companies with 50-99 employees, and a 50% increase for businesses with 100 to 499 employees. After trying many variations the program found that this formula achieved some "shifting of the maxing out" with the least amount of unfair burden allocation compared to other methods of adjusting the fee so that businesses do not reach the maximum fee with too few chemicals. However, it was rejected by the program and the Council because it increased some fees by 69%, a disparate impact on one category, and did not shift the maximum very much.

OF TURA REPORTERS, CURRENT AND PROPOSED FEE WITH $ and % INCREASE BY FTE CATEGORY AND # REPORTED CHEMICALS
Based On Calendar Year 2013 Chemical Use Reported as of August 14, 2014 prepared by MassDEP August 26, 2014

Note: This table shows the alternative fee adjustment options referred to as "Option A" and "Option C" in the August 19, 2014 memo presented to the Administrative Council.

# Chemicals	10-49 FTE #	Current	Proposed	$	%	50-99 FTE #	Current	Proposed	$	%	100-499 FTE #	Current	Proposed	$	%	500 + FTE #	Current	Proposed	$	%
										"OPTION A"										
1	74	$ 2,950	$ 4,425	$ 1,475	50%	36	$ 3,875	$ 5,812	$ 1,937	50%	46	$ 5,725	$ 8,588	$ 2,863	50%	11	$ 10,350	$ 15,525	$ 5,175	50%
2	45	$ 4,050	$ 6,075	$ 2,025	50%	15	$ 4,975	$ 7,462	$ 2,487	50%	36	$ 6,825	$ 10,238	$ 3,413	50%	1	$ 11,450	$ 17,175	$ 5,725	50%
3	13	$ 5,150	$ 7,725	$ 2,575	50%	17	$ 6,075	$ 9,112	$ 3,037	50%	16	$ 7,925	$ 11,888	$ 3,963	50%	4	$ 12,550	$ 18,825	$ 6,275	50%
4	18	**$ 5,550**	**$ 8,325**	$ 2,775	50%	9	$ 7,175	$ 10,762	$ 3,587	50%	15	$ 9,025	$ 13,538	$ 4,513	50%	2	$ 13,650	$ 20,475	$ 6,825	50%
5	11	$ 5,550	$ 8,325	$ 2,775	50%	8	**$ 7,400**	$ 11,100	$ 3,700	50%	11	$ 10,125	$ 15,188	$ 5,063	50%	3	$ 14,750	$ 22,125	$ 7,375	50%
6	7	$ 5,550	$ 8,325	$ 2,775	50%	2	$ 7,400	**$ 11,100**	$ 3,700	50%	8	$ 11,225	$ 16,838	$ 5,613	50%	4	$ 15,850	$ 23,775	$ 7,925	50%
7	7	$ 5,550	$ 8,325	$ 2,775	50%	3	$ 7,400	$ 11,100	$ 3,700	50%	2	$ 12,325	$ 18,488	$ 6,163	50%	1	$ 16,950	$ 25,425	$ 8,475	50%
8	4	$ 5,550	$ 8,325	$ 2,775	50%	4	$ 7,400	$ 11,100	$ 3,700	50%	3	$ 13,425	$ 20,138	$ 6,713	50%					
9	3	$ 5,550	$ 8,325	$ 2,775	50%						1	$ 14,525	$ 21,788	$ 7,263	50%	1	$ 19,150	$ 28,725	$ 9,575	50%
10	2	$ 5,550	$ 8,325	$ 2,775	50%	2	$ 7,400	$ 11,100	$ 3,700	50%	2	**$ 14,800**	**$ 22,200**	$ 7,400	50%	2	$ 20,250	$ 30,375	$ 10,125	50%
11	1	$ 5,550	$ 8,325	$ 2,775	50%						1	$ 14,800	$ 22,200	$ 7,400	50%					
12	1	$ 5,550	$ 8,325	$ 2,775	50%	1	$ 7,400	$ 11,100	$ 3,700	50%	1	$ 14,800	$ 22,200	$ 7,400	50%					
13	2	$ 5,550	$ 8,325	$ 2,775	50%						2	$ 14,800	$ 22,200	$ 7,400	50%					
14											1	$ 14,800	$ 22,200	$ 7,400	50%			47175*		
										"OPTION C"										
1	74	$ 2,950	$ 3,500	$ 550	19%	36	$ 3,875	$ 4,902	$ 1,027	27%	46	$ 5,725	$ 7,871	$ 2,146	37%	11	$ 10,350	$ 15,525	$ 5,175	50%
2	45	$ 4,050	$ 5,150	$ 1,100	27%	15	$ 4,975	$ 6,552	$ 1,577	32%	36	$ 6,825	$ 9,521	$ 2,696	40%	1	$ 11,450	$ 17,175	$ 5,725	50%
3	13	$ 5,150	$ 6,800	$ 1,650	32%	17	$ 6,075	$ 8,202	$ 2,127	35%	16	$ 7,925	$ 11,171	$ 3,246	41%	4	$ 12,550	$ 18,825	$ 6,275	50%
4	18	**$ 5,550**	**$ 8,325**	$ 2,775	50%	9	$ 7,175	$ 9,852	$ 2,677	37%	15	$ 9,025	$ 12,821	$ 3,796	42%	2	$ 13,650	$ 20,475	$ 6,825	50%
5	11	$ 5,550	$ 8,325	$ 2,775	50%	8	**$ 7,400**	$ 11,502	$ 4,102	55%	11	$ 10,125	$ 14,471	$ 4,346	43%	3	$ 14,750	$ 22,125	$ 7,375	50%
6	7	$ 5,550	$ 8,325	$ 2,775	50%	2	$ 7,400	**$ 12,506**	$ 5,106	69%	8	$ 11,225	$ 16,121	$ 4,896	44%	4	$ 15,850	$ 23,775	$ 7,925	50%
7	7	$ 5,550	$ 8,325	$ 2,775	50%	3	$ 7,400	$ 12,506	$ 5,106	69%	2	$ 12,325	$ 17,771	$ 5,446	44%	1	$ 16,950	$ 25,425	$ 8,475	50%
8	3	$ 5,550	$ 8,325	$ 2,775	50%	4	$ 7,400	$ 12,506	$ 5,106	69%	3	$ 13,425	$ 19,421	$ 5,996	45%					
9	4	$ 5,550	$ 8,325	$ 2,775	50%						1	$ 14,525	$ 21,071	$ 6,546	45%	1	$ 19,150	$ 28,725	$ 9,575	50%
10	2	$ 5,550	$ 8,325	$ 2,775	50%	2	$ 7,400	$ 12,506	$ 5,106	69%	2	**$ 14,800**	**$ 22,200**	$ 7,400	50%	2	$ 20,250	$ 30,375	$ 10,125	50%
11	1	$ 5,550	$ 8,325	$ 2,775	50%						1	$ 14,800	$ 22,200	$ 7,400	50%			$ 31450*		
12	1	$ 5,550	$ 8,325	$ 2,775	50%	1	$ 7,400	$ 12,506	$ 5,106	69%	1	$ 14,800	$ 22,200	$ 7,400	50%					
13	2	$ 5,550	$ 8,325	$ 2,775	50%						2	$ 14,800	$ 22,200	$ 7,400	50%					
14											1	$ 14,800	$ 22,200	$ 7,400	50%					

*(theoretical maximum for facilities with 500+ employees, however, there are no applicable facilities.